



GARRETT HEMANN ROBERTSON P.C.

CARES Act for Small Businesses

March 30, 2020

By Michael Keane, Attorney at Law

The CARES Act was signed into law on March 27. Small business assistance and relief in the CARES Act includes the creation of SBA Small Business Loans with provisions for loan forgiveness under a new Paycheck Protection Program (P3) loan, streamlined applications for Economic Income Disaster Loans (EIDL) along with the creation of EIDL Grants (which is an advance on the EIDL loans), a new payroll tax credit for certain wages paid to employees by affected businesses, and a payroll tax deferral period. Businesses receiving Paycheck Protection Program loans are not eligible to receive the payroll tax credit, and businesses should speak with their accountants to determine what programs are best for their particular scenario. In conversations with their accountants, businesses should also consider that an EIDL grant is subtracted from Payroll Protection Program loan forgiveness, and the maximum value of the payroll tax credit is \$5,000.

EIDL loans and grants are part of the disaster loan program available under the SBA disaster/7(b) program and applications are available now. P3 is being implemented now under the more traditional SBA business/7(a) loan program, applications are not yet available. If you already have a banking relationship with an approved SBA Express Lender, consider contacting your bank to explore an Express Bridge Loan. Express Bridge Loans of up to \$25,000 have fast turnarounds and are repaid in full or in part by proceeds from an EIDL loan.

Funding Available: Program and Sources

- SBA (7b) EIDL Disaster Loans and Grant – Apply directly through the SBA
- SBA (7a) Paycheck Protection Program Loans – Apply through an approved lender
- SBA (7a) Express Bridge Loan – Apply through your current approved banking institution.





SBA Paycheck Protection Program (3P) Loans (Sec. 7(a) Loans):

Loan Characteristics

- **Maximum amount:** 2.5 months of payroll costs plus SBA Disaster Loans received between January 31, 2020 and when loans are available
- Waiver of most SBA eligibility requirements
- **Low interest rates** (less than 4% for businesses) and limited fees
- Maximum **10-year term** for amounts not forgiven
 - Payment deferral for at least 6 months (limited to 1 year)
- **Loan forgiveness** for certain expenses (see section on loan forgiveness)
- Nonrecourse loans, no collateral required

Allowable Uses

- Payroll and benefits costs, including:
 - Costs for group healthcare benefits during periods of paid leave
 - Employee salaries, commissions, and similar compensation
- Interest payments on mortgages
- Rent under a lease agreement
- Utilities
- Interest on other preexisting debt obligations

Eligible Businesses

- Any business, nonprofit, or veteran organization under 500 employees
 - Sole proprietors, independent contractors, and self-employed individuals
 - Certain businesses over 500 employees in the accommodation and food services industries
- Entity was in operation on February 15, 2020; and
 - Paid employees and payroll taxes; or
 - Paid independent contractors as reported on a 1099-MISC

Loan Forgiveness

- Spending on payroll costs, mortgage interest, rent, and utility payments for the 8 weeks following loan origination are eligible for loan forgiveness (limited to principal amount of loan)
- Loan amounts forgiven are non-taxable (not included in gross income)
 - **Mortgages and leases** eligible for forgiveness must have been in place before February 15, 2020
 - **Payroll costs** eligible for forgiveness:
 - **Includes** payments of compensation that is a:





- Salary, wage, commission, or similar compensation;
 - Payment of cash tip or equivalent;
 - Payment for vacation, parental, family, medical, or sick leave*(see **Exclusions**);
 - Allowance for dismissal or separation;
 - Payment required for the provisions of group health care benefits, including insurance premiums;
 - Payment of any retirement benefit;
 - Payment of state or local taxes on employee compensation;
 - The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation capped at \$100,000 annually and prorated for the 8-week covered period.
- **Exclusions, eligible payroll costs do not include:**
 - Compensation of an individual employee in excess of an annual salary of \$100,000, prorated for the 8-week covered period;
 - Taxes imposed or withheld under chapters 21, 22, or 24 of the tax code;
 - Compensation of an employee whose principal place of residence is outside the United States;
 - Qualified sick leave wages or family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.
- **Reductions in Forgiveness Based on Employment and Salary Reductions**
 - Loan forgiveness will be reduced by the same percentage of reduction in employees
 - Forgiveness will also be reduced for reductions in salary/wages over 25% (individual basis)
 - **Exemptions for Rehired Employees and Reinstated Wages**
 - If employees who are let go, or wages are reduced by 25% or more, between February 15 and April 26 are rehired or wages are reinstated before June 30, 2020, then forgiveness will not be reduced for those particular employment or salary reductions





GARRETT HEMANN ROBERTSON P.C.

Applying for a Loan (Application Availability TBD)

Applications are Processed through Local Lenders

- Check with your bank to confirm they are approved SBA lenders;
- If you don't currently have a relationship with an SBA lender, you can find one via the [SBA's Lender Match Tool](#) or by connecting with [Portland SBA District Office](#).

Documentation: Preparing for the application

- Collect documentation, scan documents and save into an electronic file, including:
 - Payroll tax filings reported to the IRS;
 - 2019 Balance Sheet and Income Statement including schedules for accounts payable and account receivable (include even if you file or use cash basis accounting);
 - 2020 year to date Balance Sheet and Income Statement including schedules for accounts payable and account receivable (include even if you file or use cash basis accounting);
 - 2018 and 2017 IRS Returns for both the business and the owners personally, including all schedules;
 - Personal Financial Statement for owners with 20% or more ownership in the business;
 - Business Organization documentation: typically, Articles of Organization and Operating Agreements for LLCs and Articles of Incorporation and Bylaws for corporations (note that these documents need to show who is authorized to sign documents for lending purposes);
 - Forms 1099-MISC;
 - Income and expenses for sole proprietorships.

Certification: Required during application

- Certification by the business that:
 - Uncertainty makes the loan necessary;
 - Acknowledging funds will be used to retain workers or make eligible mortgage, lease, or utility payments;
 - No other applications are pending;
 - Loans haven't already been received.





SBA EIDL Loans & Grants (7b)

General Terms

- **Amount:** Up to \$2 million in assistance
 - **EIDL Advances/Grants**
 - **Up to a \$10,000 advance** on Disaster Loans applied for in response to COVID-19;
 - SBA is obligated to give the advance within 3 days of application;
 - If a business gets an SBA loan under the Paycheck Protection Program, subject to forgiveness; forgiveness will be reduced by the amount of the EIDL Grant received.
- **Term:** up to 30 years
 - **Deferment:** SBA has announced automatic deferment through the end of 2020.
- **Interest Rate:** 3.75%
- **Refinance:** EIDL Loans and grants made from January 31, 2020 to the date Paycheck Protection.
- Program loans are available may be refinanced as part of a Paycheck Protection Program loan.

Allowable Uses:

- Payroll costs, mortgage, rent and utilities payments, including:
 - Providing paid sick leave to employees unable to work due to COVID-19;
 - Maintaining payroll to retain employees during business disruptions or substantial slowdowns;
 - Meeting increased costs to obtain materials due to interrupted supply chains;
 - Making rent or mortgage payments;
 - Repaying obligations which cannot be met due to revenue losses.

Eligibility

- Any business, nonprofit, or veteran organization under 500 employees, including:
 - Sole proprietors, independent contractors, and self-employed individuals;
 - Cooperatives with 500 or less employees;
 - An ESOP with 500 or less employees.

Application through the SBA (Current as of March 30, 2020)

EIDL Application requirements

- [SBA Form 5](#)
- [Tax Information Authorization](#) completed by each applicant business, principals owning 20% or more of the business, and general partner or managing member;
- ~~*Complete copies Federal income tax returns and schedules~~ *(Waived by the CARES Act);
- [Personal Financial Statements](#) completed, by each applicant business, principals owning 20% or more of the business, and general partner or managing member;
- [Schedule of liabilities](#) listing all fixed debts;
- **Self-Certification for EIDL Grants**
 - Self-certification that the applicant is an eligible entity



Employee Retention Tax Credit for Employers Subject to Closure Due to COVID-19

Generally

- Refundable tax credit on employment taxes, equal to 50% of qualified wages paid to employees, on up to \$10,000 of wages paid per quarter, by affected businesses (maximum value of \$5,000);
- Employers receiving a **Paycheck Protection Program (7a) Loan** are not eligible for this tax credit.

Eligibility

- Employers who were in business and in any calendar quarter and affected by:
 - The operation of the trade or business is **fully or partially suspended** during the quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or
 - Experience a **significant decline in gross receipts**:
 - Beginning with a year-over-year decline in gross receipts over 50%, for a calendar quarter;
 - Ending with the calendar quarter following a calendar quarter where gross receipts are greater than 80% of 2019 gross receipts for the same quarter.

Qualified Wages

Generally

Employers with over 100 employees

- Wages with respect to which an employee is not providing services due to a full or partial suspension of business, or a significant decline in gross receipts (see eligibility).

Employers with 100 or less employees

- For business **fully or partially suspended** (see Eligibility, above) due to a COVID-19 related shutdown order, all wages paid to an employee during the suspension, limited to the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding such a period;
- For businesses experiencing a **significant decline in gross receipts** (see Eligibility, above), wages paid to employees during the calendar quarter.

Wages

- Include the employer's **qualified health plan expenses** allocable to wages.
 - **Qualified health plan expenses** are employer costs to maintain a group health plan, to the extent the amounts are excluded from employees' gross income;
 - **Allocation to wages** is proper on a pro rata basis among employees and based upon periods of coverage (relative to the periods to which the wages relate).





GARRETT HEMANN ROBERTSON P.C.

RESOURCES FOR BUSINESSES

General Resources

- [Business Oregon: Coronavirus \(COVID-19\) Resources for Businesses](#)
 - Business Oregon has compiled resources on business planning, employment advice, and financial assistance. They also have links to regional and statewide economic development organizations, as well as private organizations with additional resources.

- [U.S. SBA: Coronavirus \(COVID-19\): Small Business Guidance & Loan Resources](#)
 - The U.S. Small Business Administration has compiled financial resources currently available including an application for the **Economic Injury Disaster Loan Program**, which is a low-interest loan available to small businesses impacted by Coronavirus. Small businesses who currently have a business relationship with an SBA Express Lender can quickly access up to \$25,000 through a **SBA Express Bridge Loan**; if you don't currently have a relationship with an Express Lender, you can find one via the [SBA's Lender Match Tool](#) or by connecting with [Portland SBA District Office](#).

By Michael Keane, Shareholder in the Business section.

Rules and refinements are still being written and this program continues to be updated, so check with your advisers for the most current information.

Willamette Professional Center
1011 Commercial St. NE • Salem, Oregon 97301-1049
(503) 581-1501 • 1-800-581-1501 • Fax (503) 581-5891 • www.ghrlawyers.com

